

**REVISED AND RESTATED DECLARATION OF TRUST FOR
MARICOPA COUNTY, ARIZONA
SELF-INSURED BENEFITS TRUST FUND**

This Revised and Restated Declaration of Trust for Maricopa County, Arizona Self-Insured Benefits Trust Fund (the “**Declaration of Benefits Trust**”), dated and effective this ____ day of _____, 2016, is entered into by and between Maricopa County, a political subdivision of the State of Arizona (the “**County**”), and the individuals who serve as trustees of the Benefits Trust (hereafter, with their successors, the “**Trustees**”), to administer the Benefits Trust as provided for herein.

RECITALS

A. Arizona Revised Statutes (“**A.R.S.**”) § 11-981 authorizes the County to establish a self-insurance program for the management and administration of a system for direct payment of benefits, losses and claims or any combination of insurance and direct payments, and including risk management consultation, to provide health, accident, life and/or disability benefits to employees and officers of the County and their dependents.

B. On or about July 1, 2008, the County established a self-insurance program for the management and administration of a system for direct payment of health, accident, life and/or disability benefits, which was governed by the terms of the Revised Restated Declaration of Trust for Maricopa County, Arizona Self-Insured Trust Fund (the “**Risk Trust**”). Through the Declaration of Trust for Maricopa County, Arizona Self-Insured Benefits Trust Fund dated January 26, 2011, the County separated the governance of the Benefits Trust from the Risk Trust in accordance with action taken by the Maricopa County Board of Supervisors (the “**Board**”) in a public meeting.

C. The Benefits Trust has been administered successfully. This Declaration of Benefits Trust updates, restates and revises the Declaration of Trust for Maricopa County, Arizona Self-Insured Benefits Trust Fund dated January 26, 2011.

Accordingly, the County agrees as follows:

ARTICLE 1: Definitions

1.1 “**Benefits Trust**” means the trust established pursuant to this Declaration of Benefits Trust including any amendments, modifications and restatements, together with the assets of the Benefits Trust, in whatever form or location, including all bank accounts, savings accounts and certificates together with all investments made and held in the trust, all monies received by the trust and any other property received and in the trust for the uses and purposes set forth in this Declaration of Benefits Trust.

1.2 “**Participant**” means an employee, elected official, dependent, COBRA beneficiary, or other person determined to be an eligible participant in the Health and Welfare Benefits Program.

1.3 **“Plan”** means the arrangement pursuant to which the County provides self-insured programs to Participants, including, but not limited to, health and disability benefits.

1.4 **“Plan Administrator”** means the person or entity identified as the Plan Administrator in the Plan.

1.5 **“Health and Welfare Benefits Program”** means the program of benefits established by the Board that provide for benefits that may include, but shall not be limited to, health, wellness, accident, life, and disability, and any other legally authorized benefits as determined by the Board, whether through the Plan or group-insured programs or both.

ARTICLE 2: Purpose and Application of the Benefits Trust

2.1 Establishment. The Benefits Trust has been established, and consists of such monies as the County may deposit from time to time in the Benefits Trust, and in such accounts as are used to hold and invest the monies of the Benefits Trust; plus all other money or property that lawfully becomes a part of the Benefits Trust; plus all earnings, income, gains, appreciation and all other increments of any nature from the foregoing; and less payments made pursuant to this Declaration of Benefits Trust.

2.2 Benefits Trust. The Benefits Trust shall be held and invested by the Maricopa County Treasurer or such other person or entity as the Board may select, consistent with this Declaration of Benefits Trust and in accordance with applicable law and County policies. The Benefits Trust shall be kept separate from the Risk Trust. The County Treasurer shall submit reports to the Trustees and the Board as appropriate.

2.3 Purpose. The Benefits Trust shall be used for the purpose of administering, staffing, managing, and funding the Health and Welfare Benefits Program for the benefit of Participants as authorized by A.R.S. § 11-981.

2.4 Equal Opportunity. The Benefits Trust shall not discriminate against any individual in any way on account of such individual's race, gender, religion, color, national origin, age, disability, sexual orientation, pregnancy, veteran status, genetic information or any other characteristic defined by law or Board approved policy.

2.5 Procurement. All purchases funded by the Benefits Trust shall comply with the Maricopa County Procurement Code. Payment for materials and services contracted by the County on behalf of the Benefits Trust shall be the exclusive obligation of the Benefits Trust.

ARTICLE 3: Organization and Operation of the Trustees

3.1 Number and Identity. The Benefits Trust shall be administered by no fewer than six (6) joint trustees, all of whom shall be citizens of the United States of America and residents of Maricopa County, Arizona. All Trustees shall be at least 21

years of age and no person shall qualify as Trustee until he or she has received a written appointment, which shall be recorded with the Clerk of the Board and the records of the Benefits Trust.

3.2 Appointment. Each supervisorial district shall be represented by one (1) Trustee, who shall have been appointed by the supervisor of that district and approved by the Board. The Trustees appointed by the supervisors shall not be employees or elected officials of the County or the Maricopa County Superior Court, and shall not be eligible to receive benefits in their own right or as a dependent of another person under any aspect of the Health and Welfare Benefits Program. They should have experience in at least one of the following areas: health care administration, benefits plan administration, health insurance administration, or financial analysis. In addition, the County Manager, or his or her designee, shall serve as a Trustee. The County Manager's designee is subject to the approval of the Board, and shall possess the following qualifications: (i) the designee shall be an employee of the County or the Arizona Superior Court, in and for Maricopa County; (ii) the designee shall report directly to the County Manager with respect to this appointment; and (iii) the designee shall be reasonably familiar with the subject matter of the appointment.

3.3 Term. Unless terminated earlier as described in this Article, the term of office for a Trustee shall be for four (4) years, except that the designee of the County Manager shall serve for an indefinite term, subject to removal and substitution by the Board with or without cause. Any Trustee may be reappointed by the Board upon expiration of his or her term, or upon the expiration of his or her term, any Trustee may continue to serve until his or her successor has been appointed.

3.4 Termination. The term of any Trustee will automatically terminate upon the earliest of the following: death; resignation; removal; failure to attend three consecutive meetings; and, for the County Manager's designee, upon separation of employment.

3.5 Resignation. A Trustee may resign at any time by giving notice in writing to the remaining Trustees, the Board, and the County Manager. Such resignation shall take effect not later than 60 days from the date it is received.

3.6 Vacancies. The resignation, incompetency, death, removal, or termination of any or all of the Trustees shall not terminate the Benefits Trust or affect its continuity. During a vacancy, the remaining Trustees may exercise the power of the Trustees hereunder. Vacancies among the Trustees shall be filled by a written appointment and in the manner provided in Section 3.2 above.

3.7 Removal. Any Trustee may be removed with or without cause upon written notice delivered to the Trustee from the individual or body that appointed the Trustee.

3.8 Chair. The Trustees shall elect from their members a Chair. The Chair shall be elected by a majority of the Trustees and may be removed upon a vote of the

majority of the Trustees. The Chair shall serve a two (2) year term and may be elected to successive terms.

3.9 Conflicts of Interest. Each Trustee shall comply with Arizona conflict of interest laws for public officers and employees as set forth in A.R.S. § 38-503, as well as any other applicable law regarding conflicts of interest.

3.10 No Compensation. The Trustees shall not be entitled to compensation for their services, but shall be entitled to receive reimbursement for any reasonable and necessary out-of-pocket expenses incurred in performance of their duties.

3.11 Meetings. The Trustees shall meet as frequently as they shall determine necessary and appropriate, but not less than quarterly. Meetings may be conducted in person, by teleconference, video conference, or by other electronic means of communication. The Chair, any two Trustees, the Plan Administrator, or the Benefits Finance Manager may call a meeting at any time upon two (2) days' notice, either written or verbal, except in the case of an actual emergency, in which event a meeting, including an executive session, may be held on such notice as is appropriate to the circumstances. All meetings shall be subject to applicable statutes, rules and regulations, including Arizona's Open Meeting Law, A.R.S. § 38-431 et seq.

3.12 Quorum. A majority of appointed Trustees constitutes a quorum.

3.13 Action. The Trustees may act only during a formal meeting of the Trustees, except in case of an emergency, as determined by the Chair or a majority of the Trustees, during which the Trustees may act without a meeting subject to ratification and confirmation of the act at the next meeting of the Trustees. Each Trustee shall have one vote. All actions by the Trustees shall require affirmative votes of a majority of a quorum of Trustees to have any weight or effect.

3.14 Minutes. The Trustees shall maintain minutes of their meetings.

3.15 Bonding. The Trustees shall be bonded or insured. This requirement may be satisfied by a blanket performance bond or other coverage provided or procured by the County.

3.16 Non-Liability. Except as otherwise provided by law, no Trustee shall be individually liable for any action or omission in the conduct of his or her duties with respect to the Benefits Trust unless such action or omission is due to the Trustee's own gross negligence, bad faith, and/or willful and wanton misconduct.

3.17 Indemnification. Any person who is or has served as a Trustees shall be indemnified, defended, and held harmless from and against all claims and liabilities, whether they proceed to judgment or are settled, to which such Trustee may become subject, by reason of his or her being or having been a Trustee; provided, however, that no Trustee shall be indemnified or reimbursed in relation to any matter for gross negligence, bad faith, and/or willful and wanton misconduct in the conduct of his or her duties.

3.18 Legal Advice. The Trustees shall seek legal advice from and through the County Attorney when legal advice is deemed necessary. In the event that the County Attorney cannot provide legal advice, due to conflict of interest or otherwise (as determined by the Board), private outside counsel shall serve in his or her place and stead. The Trustees may make recommendations to the Board with respect to appointment of outside counsel.

ARTICLE 4: Powers and Duties of the Trustees

4.1 Responsibilities and Authority Assigned to the Trustees. The Trustees are delegated the responsibility for and are authorized to exercise the following duties and authority in their role as Trustees:

4.1.1 Providing general financial oversight of the Benefits Trust and serving in an advisory capacity to the Board.

4.1.2 Reviewing quarterly the financial position of the Benefits Trust to ensure sufficient funds exist to pay outstanding and future benefits, losses, and claims and to pay for risk management consultation.

4.1.3 Providing input and recommendations to the Board on financial issues relating to the Plan, including total Plan premiums. The Trustees shall, in consult with the Benefits Finance Manager, determine the recommended total premiums no less frequently than annually, and make such recommendations to the Board for approval.

4.1.4 Determining funding levels and reserve requirements and amounts for the Plan, so long as they are based on generally-accepted actuarial methods, adequate and appropriate for the Benefits Trust's self-insured retention program, and are at least equal to estimated claims incurred but not reported.

4.1.5 Determining an adequate and appropriate provision for stop-loss insurance, contingent on maintaining recommended Benefit Trust reserves.

4.1.6 Making recommendations to the Board on premium holidays, subsidies, and/or refunds, so long as such recommended premium holidays, subsidies and/or refunds do not reduce Benefit Trust reserves below the recommended level without a sound contingency to cover any shortfall in the Benefits Trust. All such recommendations shall be subject to the review and approval of the Board.

4.1.7 Providing input and recommendations to the Board on modifications of the terms and conditions of this Declaration of Benefits Trust.

4.1.8 Adopting any policies, rules, or procedures necessary for the administration of the Benefits Trust; provided that such policies, rules and procedures are not inconsistent with the provisions of this Declaration of Benefits Trust or applicable state and federal law.

4.1.9 Reviewing and making determinations concerning the acceptance of the annual audit, and request, as appropriate, that specific items be reviewed in conjunction with the annual audit or as a special audit.

4.1.10 Prosecuting, defending and compromising actions, claims and proceedings for the protection of the assets of the Benefits Trust and the exercise of the powers vested in the Trustees under this Declaration of Benefits Trust, including, but not limited to, actions for recovery of the cost of medical care and treatment pursuant to A.R.S. § 12-962 and other applicable law. The Trustees shall have the authority to compromise actions, claims or proceedings against the County for the protection of the assets of the Benefits Trust up to \$200,000. The Trustees shall have the authority to compromise demands or claims for recovery under the Plan of all subrogation, restitution, salvage and related claims, including reimbursement of the cost of medical care and treatment, when the settlement amount is between \$100,000 and \$200,000 less than the amount that the County or its authorized agent has demanded in reimbursement. The Board reserves the right to engage and authorize third party administrators to perform recovery services under the Plan for overpayments, third party liability, subrogation, and abusive and fraudulent claims, and to delegate to such contractors the discretion and authority over whether to pursue amounts at issue up to a threshold amount as determined by the Board.

4.2 Responsibilities Not Assigned to the Trustees. The Trustees shall have no authority or responsibility for the following:

4.2.1 Designing, adopting, amending, or terminating the Plan or any aspect of the Health and Welfare Benefits Program;

4.2.2 Ensuring that the Plan or any aspect of the Health and Welfare Benefits Program complies with applicable state or federal laws;

4.2.3 Selecting or retaining services and service providers for the Plan or any aspect of the Health and Welfare Benefits Program;

4.2.4 Determining what portion of Plan premiums and any other aspects of the Health and Welfare Benefits Program should be paid by Participants and what portion should be paid by the County; or

4.2.5 Collecting premiums from Participants.

Unless otherwise delegated in this Declaration of Benefits Trust, authority and responsibility for the foregoing items in this Section rest with the Board, which may delegate this authority and responsibility to County staff and/or third parties.

ARTICLE 5: Management of the Benefits Trust

5.1 Day-to-Day Management. Subject to specific delegation of duties set forth below, the day to day management and administration of the Benefits Trust shall be

provided by the Plan Administrator, Benefits Finance Manager, County staff and officials, and third-party administrators under contract with the County, who will submit reports as appropriate to the Trustees and the Board.

5.2 Plan Administrator. The Plan Administrator is delegated responsibility for:

5.2.1 Day to day management and administration of the Plan, including oversight of the administration of the direct payment of benefits, losses and claims pursuant to the Plan. The Plan Administrator may act in reasonable reliance on the actions of one or more third-party administrator(s) under contract with the County to provide plan administration services.

5.2.2 Overseeing and managing the prosecution, defense, and compromise of actions, claims, and proceedings for the protection of the assets of the Benefits Trust and making related recommendations to the Trustees and the Board, as needed. The Plan Administrator may, after consulting with the Trustees, direct prosecution of actions in the name of the County for reimbursement of the cost of medical care and treatment paid under the Plan, including, but not limited to, actions for recovery of the cost of medical care and treatment pursuant to A.R.S. § 12-962 and other applicable law. The Plan Administrator shall have the authority to compromise demands or claims for recovery under the Plan of all subrogation, restitution, salvage and related claims, including reimbursement of the cost of medical care and treatment, when the settlement amount is up to \$100,000 less than the amount that the County or its authorized agent has demanded in reimbursement.

5.3 Finance Manager. The County's Benefits Finance Manager ("**Finance Manager**") shall be licensed pursuant to Title 20, Chapter 2, Article 3 or 9, of the Arizona Revised Statutes, and the County Manager shall verify such licensure. The Finance Manager is delegated responsibility for:

5.3.1 Overseeing and managing all payments and disbursements made by the Benefits Trust, including, but not limited to, those made to third party administrators.

5.3.2 Providing written reports to the Trustees each quarter showing the financial position of the Benefits Trust, including receipts and expenditures for the quarter. The Finance Manager shall cooperate with the County's external auditor on the performance of the annual audit of the Benefits Trust, and present the external auditor's annual audit report to the Trustees in a duly noticed meeting.

5.3.3 Reviewing and presenting to the Trustees no less frequently than annually, recommendations by the County's appointed actuary on adequate and appropriate reserve amounts for the Plan based on generally-accepted actuarial methods.

5.3.4 Making recommendations to the Trustees on an adequate and appropriate provision for stop-loss insurance for self-insured liability, contingent on maintaining recommended Benefit Trust reserves.

5.3.5 Presenting to the Trustees for review and input prior to approval by the Board, the total recommended premiums needed to support the Plan and any Plan design changes having a financial impact on Plan premiums. In determining recommended total premiums, the Finance Manager shall consult with licensed actuaries familiar with the Benefits Trust and the Plan, and consider all reasonable factors, including the amount of reserves in the Benefits Trust, the claims experience of the Plan and the Benefits Trust, market conditions, and cost trends.

5.3.6 Making recommendations to the Trustees and the Board, as needed or requested, on premium holidays, subsidies, and/or refunds, which must not reduce the Benefits Trust reserves below the recommended level without a sound contingency to cover any shortfall in the Benefits Trust.

5.3.7 Submitting claims in class actions filed on behalf of self-insured health care or disability plans similarly situated to the Plan when, in his or her best judgment and after consulting with legal counsel of record, the Finance Manager determines there are sufficient and meritorious grounds. The Finance Manager shall have the authority to accept settlements of such submitted claims up to \$100,000, where the class action reaches a settlement approved by a court of law.

5.3.8 Making recommendations to the Board concerning the engagement of the County's actuaries and external auditors.

ARTICLE 6: Contributions to and Distributions from the Benefits Trust

6.1 Contributions. Contributions to the Benefits Trust shall be as follows:

6.1.1 Funding. The Benefits Trust may be funded by any one or more of the following sources and as otherwise authorized by the Board: allocation of funds from general fund and non-general fund departments of the County and special taxing districts, employee contributions, gifts, grants, by an special taxes levied to satisfy judgments, payment of claims or other involuntary indebtedness and by monies recovered from litigation, liens, recovery from insurers, subrogation, salvage value of damaged property, interest, dividends, rebates, forfeitures, refunds, credits, reimbursements, and recovery from third parties. The County shall deposit all monies received for the purposes of funding the Health and Welfare Benefits Program, including, but not limited to, contributions collected from Participants through payroll deductions and County contributions, into the Benefits Trust.

6.1.2 Event of Underfunding. In the event the available financial resources of the Benefits Trust prove inadequate to meet the obligations of the Benefits Trust, the Board shall take action to cure the deficiency with either or both interim or

permanent transfers from the County's general fund or other non-general funds sufficient to meet the Benefit Trust's obligations.

6.2 Distributions. Distributions from the Benefits Trust shall be made for the following reasons and as otherwise authorized by the Board; provided, however, there shall be no expenditure for any purpose not specified in A.R.S. § 11-981:

6.2.1 Benefits. Paying for or providing benefits to Participants in accordance with the terms, provisions, and conditions of the Plan, and paying for premiums of group-insured programs pursuant to the Health and Welfare Benefits Program.

6.2.2 Expenses. Paying, either directly or by reimbursement, all reasonable expenses of operating, administering, and managing the Plan, the Health and Welfare Benefits Program, and the Benefits Trust, including, but not limited to:

6.2.2.1 Where third parties are engaged to provide services to the Plan, the Health and Welfare Benefits Program, or the Benefits Trust, compensating such third parties;

6.2.2.2 Where employees of the County render services to the Plan or Benefits Trust, compensating the County for such services; and

6.2.2.3 Where taxes or assessments are levied or imposed upon the Plan or Benefits Trust, paying such taxes or assessments.

6.2.3 Return of Mistaken Contribution. Returning a contribution made by the County or a Participant as the result of a mistake, provided that the repayment is not prohibited by law.

6.2.4 Upon Termination. Upon termination of the Benefits Trust, after all obligations of the Benefits Trust have been satisfied, any remaining Funds shall be transferred in accordance with Article 9 below.

ARTICLE 7: Settlement Authority

The Board must approve all settlements of actions, claims, or proceedings for the protection of the assets of the Benefits Trust, including claims for reimbursement of the cost of medical care and treatment, that are not within the authority granted to the Plan Administrator, Finance Manager or Trustees as set forth above.

ARTICLE 8: Statutory Requirements

8.1 Stop-Loss Insurance. For self-insured liability covered by the Benefits Trust Fund, the stop-loss terms and amount shall be determined by the Trustees not less than annually.

8.2 Auditor. The County shall engage an independent external auditor to perform an annual audit of the Benefits Trust. Each audit report shall be kept on file for no less than five (5) years with the Clerk of the Board.

8.3 Risk Management Consultant or Insurance Administrator. The County shall designate a risk management consultant or insurance administrator licensed pursuant to Title 20, Chapter 2, Article 3 or 9, of the Arizona Revised Statutes. The Board or its duly authorized designee shall verify such licensure.

ARTICLE 9: Dissolution and Termination

In accordance with A.R.S. § 11-981, if the Board determines that it will no longer provide a self-insured health and welfare benefits program, any other fully self-insured plan for Participants, or a trust is no longer required by law for such plans, the Board may dissolve the Benefits Trust and terminate this Declaration of Benefits Trust after payment of all valid outstanding liabilities and obligations. Upon notice of such dissolution and termination, the Trustees shall cause any remaining funds in the Benefits Trust to be transferred to the County for deposit in its general fund.

ARTICLE 10: Miscellaneous

10.1 Reservation of Authority. Nothing contained in this Declaration of Benefits Trust shall modify or restrict the legal authority of the Board to amend or terminate the Plan or to administer and operate appropriate insurance programs for the County.

10.2 Disclaimer of Third Party Beneficiaries. Nothing in this Declaration of Benefits Trust is intended to confer the status of third-party beneficiary on any person or entity.

10.3 Waiver. No waiver of any of the provisions of this Declaration of Benefits Trust by the Trustees or the County shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. No waiver by the Trustees or the County of any provision of this Declaration of Benefits Trust shall be binding unless executed in writing by the Trustees or the County, as appropriate.

10.4 Amendments. This Declaration of Benefits Trust may be amended or modified only by the Board, with notice to and in consultation with the Trustees. The Trustees may recommend amendments to the Board.

10.5 Complete Agreement. This Declaration of Benefits Trust, including any schedules or exhibits attached hereto, constitutes the entire Declaration of Benefits Trust and supersedes all other understandings, oral or written, related to the governance of the Benefits Trust.

10.6 Governing Law and Conflicts. This Declaration of Benefits Trust is governed by and construed in accordance with the laws of the State of Arizona. If any

term or provision of this Declaration of Benefits Trust conflicts with or violates state law, the law shall control.

Signature Pages to Follow

DRAFT

The County hereby approves and accepts the foregoing Revised and Restated Declaration of Trust for Maricopa County, Arizona Self-Insured Benefits Trust Fund effective _____, 2016 and agrees to be bound by its provisions.

MARICOPA COUNTY

By _____
Chairman, Board of Supervisors Date _____

ATTESTED TO:

Clerk of the Board Date _____

APPROVED AS TO FORM:

Deputy County Attorney Date _____

The undersigned Trustees hereby accept the trusteeship under the foregoing Revised and Restated Declaration of Trust for Maricopa County, Arizona Self-Insured Benefits Trust Fund effective _____, 2016 and agree to be bound by its provisions.

Jim Steinkamp

_____ Trustee	_____ Date
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Brad Arnett

_____ Trustee	_____ Date
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Beverly Dupree

_____ Trustee	_____ Date
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Rex Jorgensen

_____ Trustee	_____ Date
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Helena Whitney

_____ Trustee	_____ Date
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